

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CODY KING,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	FILE No. _____
BJT ENTERPRISES, INC. and)	
ERNEST RANDALL PAGE,)	
)	
Defendants.)	

COMPLAINT

COMES NOW, CODY KING, by and through the undersigned counsel, and files this, his Complaint against Defendants BJT ENTERPRISES, INC. and RANDY PAGE pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.* (“ADA”) and the ADA’s Accessibility Guidelines, 28 C.F.R. Part 36 (“ADAAG”). In support thereof, Plaintiff respectfully shows this Court as follows:

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1343 for Plaintiff’s claims pursuant to 42 U.S.C. § 12181, *et seq.*, based upon Defendants’ failure to remove physical barriers to access and violations of Title III of the ADA.

2. Venue is proper in the federal District Court for the Northern District

of Georgia, Atlanta Division, as the parcel of real property at issue in this case is located in Rockdale County, Georgia.

PARTIES

3. Plaintiff CODY KING (hereinafter “Plaintiff”) is, and has been at all times relevant to the instant matter, a natural person residing in Conyers, Georgia (Rockdale County).

4. Plaintiff is a paraplegic and is disabled as defined by the ADA.

5. Plaintiff is required to traverse in a wheelchair and is substantially limited in performing one or more major life activities, including but not limited to: walking, standing, grabbing, grasping and/or pinching.

6. Plaintiff uses a wheelchair for mobility purposes.

7. Defendant BJT ENTERPRISES, INC. (hereinafter “BJT”) is a Georgia corporation that transacts business in the state of Georgia and within this judicial district.

8. BJT operates a business located at 4669 Highway 20 South, Conyers, Georgia 30013, doing business as “Quick Stop Superette.”

9. BJT may be properly served with process via its registered agent for service, to wit: Randy Page, 4669 Highway 20 South, Conyers, Georgia 30013.

10. BJT is the lessee (or sub-lessee) of the real property and

improvements that are the subject of this action. (The multi-tenant structure and improvements situated upon such real property shall be referenced herein as the “Facility”).

11. Defendant ERNEST RANDALL PAGE (hereinafter “Page”) is an individual whom, upon information and good faith belief, has been a resident of the State of Georgia at all times relevant hereto.

12. Page is the owner or co-owner of the real property and improvements that are the subject of this action (the “Property”).

13. Page may be properly served with process at 6855 Highway 20 South, Covington, Georgia 30016.

FACTUAL ALLEGATIONS

14. On or about September 30, 2022, Plaintiff was a customer at “Quick Stop Superette.”

15. Plaintiff lives approximately two (2) miles from the Facility and Property.

16. Plaintiff’s access to the businesses located at 4669 Highway 20 South, Conyers, Georgia 30013 (Rockdale County Property Appraiser’s parcel number 051002014F), and/or full and equal enjoyment of the goods, services, foods, drinks, facilities, privileges, advantages and/or accommodations offered therein

were denied and/or limited because of his disabilities, and he will be denied and/or limited in the future unless and until Defendant is compelled to remove the physical barriers to access and correct the ADA violations that exist at the Facility and Property, including those set forth in this Complaint.

17. Plaintiff has visited the Facility and Property at least once before and intends on revisiting the Facility and Property once they are made accessible.

18. Plaintiff intends to revisit the Facility and Property to purchase goods and/or services.

19. Plaintiff travelled to the Facility and Property as a customer and as an advocate for the disabled, encountered the barriers to his access of the Facility and Property that are detailed in this Complaint, engaged those barriers, suffered legal harm and legal injury, and will continue to suffer such harm and injury as a result of the illegal barriers to access present at the Facility and Property.

COUNT I
VIOLATIONS OF THE ADA AND ADAAG

20. On July 26, 1990, Congress enacted the Americans with Disabilities Act 42 U.S.C. § 12101 *et seq.* (the “ADA”).

21. The ADA provided places of public accommodation one and a half years from its enactment to implement its requirements.

22. The effective date of Title III of the ADA was January 26, 1992 (or

January 26, 1993 (if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181; 28 C.F.R. § 36.508(a).

23. The Facility is a public accommodation and service establishment.

24. The Property is a public accommodation and service establishment.

25. Pursuant to the mandates of 42 U.S.C. § 12134(a), on July 26, 1991, the Department of Justice and Office of Attorney General promulgated federal regulations to implement the requirements of the ADA. 28 C.F.R. Part 36.

26. Public accommodations were required to conform to these regulations by January 26, 1992 (or by January 26, 1993 if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181 *et seq.*; 28 C.F.R. § 36.508(a).

27. Liability for violations under Title III or the ADA falls on “any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

28. The Facility must be, but is not, in compliance with the ADA and ADAAG.

29. The Property must be, but is not, in compliance with the ADA and ADAAG.

30. Plaintiff has attempted to, and has to the extent possible, accessed the

Facility and the Property in his capacity as a customer of the Facility and Property, but could not fully do so because of his disabilities resulting from the physical barriers to access, dangerous conditions and ADA violations that exist at the Facility and Property that preclude and/or limit his access to the Facility and Property and/or the goods, services, facilities, privileges, advantages and/or accommodations offered therein, including those barriers, conditions and ADA violations more specifically set forth in this Complaint.

31. Plaintiff intends to visit the Facility and Property again in the very near future as a customer and as an advocate for the disabled in order to utilize all of the goods, services, facilities, privileges, advantages and/or accommodations commonly offered at the Facility and Property, but will be unable to fully do so because of his disability and the physical barriers to access, dangerous conditions and ADA violations that exist at the Facility and Property that preclude and/or limit his access to the Facility and Property and/or the goods, services, facilities, privileges, advantages and/or accommodations offered therein, including those barriers, conditions and ADA violations more specifically set forth in this Complaint.

32. Defendants have discriminated against Plaintiff (and others with disabilities) by denying his access to, and full and equal enjoyment of the goods,

services, facilities, privileges, advantages and/or accommodations of the Facility and Property, as prohibited by, and by failing to remove architectural barriers as required by, 42 U.S.C. § 12182(b)(2)(A)(iv).

33. Defendants will continue to discriminate against Plaintiff and others with disabilities unless and until Defendants are compelled to remove all physical barriers that exist at the Facility and Property, including those specifically set forth herein, and make the Facility and Property accessible to and usable by Plaintiff and other persons with disabilities.

34. A specific list of unlawful physical barriers, dangerous conditions and ADA violations which Plaintiff experienced and/or observed that precluded and/or limited Plaintiff's access to the Facility and Property and the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the Facility and Property include, but are not limited to:

(a) EXTERIOR ELEMENTS:

- (i) The accessible parking space on the Property and its adjacent access aisle are not adequately marked, in violation of sections 502.1 and 502.3 of the 2010 ADAAG standards.
- (ii) The ramp on the Property does not provide for a 36" (thirty-six inch) inch clear and level landing, and requires turning on a

sloped surface, in violation of section 406.4 of the 2010 ADAAG standards.

- (iii) Due to a lack of parking stops that encourage vehicles to pull up far enough to block the accessible route to the entrances of the Facility, along with other obstructions such as store inventory, boxes and trash cans, there are publicly accessible areas of the Property having accessible routes with clear widths below the minimum 36” (thirty-six inches) inches required by section 403.5.1 of the 2010 ADAAG standards.
- (iv) The operable parts on the fuel dispensers on the Property are at a height exceeding 54” (fifty-four inches) from the surface of the vehicular way, in violation of section 308.3.1 of the 2010 ADAAG standards.

(b) INTERIOR ELEMENTS:

- (i) The interior of the “Quick Stop Superette” portion of the Facility has sales and services counters lacking any portion of which that has a maximum height of 36” (thirty-six inches) from the finished floor, in violation of section 904.4 of the 2010 ADAAG standards. Operable features on said counter have a

reach depth exceeding 25” (twenty-five inches), in violation of section 308.2.2 of the 2010 ADAAG standards.

- (ii) The “Quick Stop Superette” portion of the Facility lacks restrooms signage that complies with sections 216.8 and 703 of the 2010 ADAAG standards.
- (iii) There is inadequate clear turning space in the restrooms in the “Quick Stop Superette” portion of the Facility, in violation of section 603.2.1 of the 2010 ADAAG standards.
- (iv) The restrooms in the “Quick Stop Superette” portion of the Facility have sinks that do not provide for adequate knee and toe clearance thereunder, in violation of section 606.2 of the 2010 ADAAG standards.
- (v) The lavatories and/or sinks in the restrooms in the “Quick Stop Superette” portion of the Facility have exposed pipes and surfaces that are not insulated or configured to protect against contact with the skin, in violation of section 606.5 of the 2010 ADAAG standards.
- (vi) The centerlines of the commodes in the accessible toilet stalls in the restrooms in the “Quick Stop Superette” portion of the

Facility are not correctly positioned from the restroom sidewall, in violation of section 604.2 of the 2010 ADAAG standards.

(vii) There are no grab bars adjacent to the commode in the restroom in the “Quick Stop Superette” portion of the Facility, in violation of section 604.5 of the 2010 ADAAG standards.

(viii) The hand operated flush control on the commode in the men’s restroom in the “Quick Stop Superette” portion of the Facility is not located on the open side of the accessible stalls, in violation of section 604.6 of the 2010 ADAAG standards.

35. Upon information and good faith belief, Defendant fails to adhere to a policy, practice and procedure to ensure that all features and facilities at the Facility and Property are readily accessible to, and usable by, disabled individuals.

36. Without limitation, the above-described violations of the ADAAG made it more difficult for Plaintiff to traverse the ramp servicing the Property, more difficult for Plaintiff to travel upon the exterior accessible routes on the Property, rendered the fuel dispensers on the Property inaccessible to Plaintiff, made it more difficult for Plaintiff to conduct his business within the “Quick Stop Superette” portion of the Facility, and rendered the restroom in the “Quick Stop Superette” portion of the Facility inaccessible to Plaintiff.

37. The violations enumerated above may not be a complete list of the barriers, conditions or violations encountered by Plaintiff and/or which exist at the Facility and Property.

38. Plaintiff requires an inspection of Facility and Property in order to determine all of the discriminatory conditions present at the Facility and Property in violation of the ADA.

39. The removal of the physical barriers, dangerous conditions and ADA violations alleged herein is readily achievable and can be accomplished and carried out without significant difficulty or expense. 42 U.S.C. § 12182(b)(2)(A)(iv); 42 U.S.C. § 12181(9); 28 C.F.R. § 36.304.

40. All of the violations alleged herein are readily achievable to modify to bring the Facility and Property into compliance with the ADA.

41. Upon information and good faith belief, the removal of the physical barriers and dangerous conditions present at the Facility and Property is readily achievable because the nature and cost of the modifications are relatively low.

42. Upon information and good faith belief, the removal of the physical barriers and dangerous conditions present at the Facility and Property is readily achievable because Defendants have the financial resources to make the necessary modifications.

43. In instances where the 2010 ADAAG standards do not apply, the 1991 ADAAG standards apply, and all of the alleged violations set forth herein can be modified to comply with the 1991 ADAAG standards.

44. Plaintiff is without adequate remedy at law, is suffering irreparable harm, and reasonably anticipates that he will continue to suffer irreparable harm unless and until Defendants are required to remove the physical barriers, dangerous conditions and ADA violations that exist at the Facility and Property, including those alleged herein.

45. Plaintiff's requested relief serves the public interest.

46. The benefit to Plaintiff and the public of the relief outweighs any resulting detriment to Defendants.

47. Plaintiff's counsel is entitled to recover its reasonable attorney's fees and costs of litigation from Defendants pursuant to 42 U.S.C. §§ 12188 and 12205.

48. Pursuant to 42 U.S.C. § 12188(a), this Court is provided authority to grant injunctive relief to Plaintiff, including the issuance of an order to modify the Facility and Property to the extent required by the ADA.

WHEREFORE, Plaintiff prays as follows:

- (a) That the Court find BJT ENTERPRISES, INC. in violation of the ADA and ADAAG as to each violation enumerated herein that is

under its ownership, possession and/or control;

- (b) That the Court find RANDY PAGE in violation of the ADA and ADAAG as to each violation enumerated herein that is under his ownership, possession and/or control;
- (c) That the Court issue a permanent injunction enjoining Defendants from continuing their discriminatory practices;
- (d) That the Court issue an Order requiring Defendants to (i) remove the physical barriers to access and (ii) alter the subject Facility to make it readily accessible to and useable by individuals with disabilities to the extent required by the ADA;
- (e) That the Court award Plaintiff his reasonable attorneys' fees, litigation expenses and costs; and
- (f) That the Court grant such further relief as just and equitable in light of the circumstances.

Dated: October 14, 2022.

Respectfully submitted,

/s/Craig J. Ehrlich

Craig J. Ehrlich

Georgia Bar No. 242240

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

/s/Craig J. Ehrlich
Craig J. Ehrlich